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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO. 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: [redacted] Office: ROME, ITALY Date: APR 29 2003

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. 1182(h) and (i)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (the Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Belgium and citizen of Belgium and Italy, was found by a consular officer to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of two offenses relating to a controlled substance. The applicant is engaged to a United States citizen and is the beneficiary of an approved petition for alien fiance(e). She seeks a waiver of this permanent bar to admission under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to travel to the United States to marry and reside.

The district director also found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa for admission into the United States by fraud or willful misrepresentation. The district director then concluded that the applicant's two offenses for drug-related violations render her ineligible for a waiver of inadmissibility and denied the application accordingly.

On appeal, the applicant asks to be acquitted for the offenses she committed and to be given a second chance to marry and live with the man she loves in the United States.

The record reflects that the applicant initially entered the United States in 1994 as an exchange visitor. On December 12, 1996, she was charged with possession of less than 50 grams of marijuana and with possession, with intent to use, drug paraphernalia to inhale a controlled substance. Specifically, the record indicates that the applicant was stopped for a vehicle violation and was found to possess a metal pipe with burnt marijuana residue and a package of rolling papers.

On February 4, 1997, the charge of possession of drug paraphernalia was dismissed. For the charge of possession of under 50 grams of marijuana, the applicant was granted conditional discharge and placed under court supervision for a period of six months. Upon completion of court supervision, the charge against the applicant was dismissed.

The record further reflects that the applicant applied for, and was issued, a nonimmigrant student visa in Milan on December 30, 1996. At that time, she failed to admit to having been arrested on December 12, 1996.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are

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ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such acts which constitute the essential elements of-

* * *

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. § 802), is inadmissible.

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(h) of the Act states:

The Attorney General may, in his discretion, waive the application of . . . subsection (a)(2) and subparagraph (A)(i)(II) of such subsection **insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana** if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is

inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection. (Emphasis added.)

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of

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> subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

The district director states that the applicant "admitted in open court" to **two** offenses relating to a controlled substance. Therefore, he found the applicant statutorily ineligible for a waiver of inadmissibility under section 212(h) of the Act. The AAO finds insufficient evidence in the record to support this finding. The record indicates that the applicant was arrested for possession of a metal pipe with burnt marijuana residue and a package of rolling papers. A charge of possession of drug paraphernalia was dismissed and she was given conditional discharge for the possession of under 50 grams of marijuana offense. The record is clear that the amount of marijuana involved was less than 30 grams. There is no evidence contained in the record of the applicant having admitted to two offenses relating to a violation of a controlled substance. The AAO therefore, finds that the applicant is eligible for a waiver under section 212(h).

The consular officer strongly recommends a waiver in this case on account of the nature and date of the offense, the applicant's completion of a treatment program, her reformation of character, and her intention to marry a citizen of the United States. However, though the applicant filed an I-601 waiver, the record contains insufficient evidence from the applicant to establish that her spouse would suffer extreme hardship in the event her waiver request is denied.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of proving eligibility remains entirely with the applicant. *Matter of Ngai*, 19 I&N, Dec. 245(Comm. 1984). Here the applicant has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.